Remang Offshore Supplies Sdn Bhd v Alam Maritim (M) Sdn Bhd

HIGH COURT (MIRI) — SUIT NO MYY-22–45/12 OF 2012
STEPHEN CHUNG J
29 SEPTEMBER 2014

Contract — Claims — Claim for monies owing — Failure to pay — Oil and gas company entered into contract to supply marine vessel — Company engaged service of food caterer — Allegation that there was standard operating procedures applicable to contract between them — Whether food caterer required to obtain acknowledgement and signatures of Petronas Carigali — Whether food caterer entitled to payment

The defendant was contracted to supply a marine vessel to Petronas Carigali. In turn, the defendant engaged the plaintiff to provide catering services to the crews on board the vessel for the months of May and June 2011. According to the plaintiff, the catering services it provided amounted to RM495,735.96 of which the defendant failed to pay. Hence, the plaintiff filed the present claim for the said sum against the defendant. The defendant denied any mobilisation and supply of food or catering services delivered by the plaintiff to the defendant. The defendant contended that it had informed the plaintiff of the standard operating procedures ('SOP') applicable to the contract between them; the plaintiff was required to obtain the acknowledgement and signatures of Petronas Carigali that the catering services had been provided before Petronas Carigali would pay the defendant which would enable the defendant to pay the plaintiff. The defendant contended that the plaintiff failed to do so and was not entitled to the payment. The plaintiff argued that the defendant did not inform them of any SOP nor of the terms and conditions of such SOP. The evidence showed that by a letter of intent, the defendant requested the plaintiff to cater the foods and drinks of workers on board of a work barge offshore Terengganu. The letter requested the plaintiff to acknowledge, sign and return the letter as soon as possible. The plaintiff signed and returned the letter. This was the only document or contract and there was no other contract or document which set out the terms and conditions of the contract between the plaintiff and the defendant.

Held, allowing the claim with costs:

(1) Based on the 'residents meal record' for the month of May 2011, the plaintiff commenced the catering services on board the work barge from 16 May 2011. It listed the number of workers or residents who were on board the barge on each day of the contract for the catering services. The

record showed that the numbers included workers and visitors from different companies or subcontractors and others working on board and the plaintiff provided meals and drinks for these persons on board. These included the catering crews from the plaintiff and the workers from the defendant (see para 10).

(2) In the absence of an established SOP or a common practice in the oil and gas industry or that the plaintiff was required to obtain the acknowledgement and signature of Petronas Carigali before it was entitled to payment, the acknowledgement or confirmation by the captain of the vessel was the best proof of the number of persons on board the vessel on each day and the number of persons to be provided with foods and drinks on board the vessel on each day (see para 12).

(3) The defendant did not plead that it was a practice or customs common in the oil and gas industry. The defendant did not plead that the plaintiff knew of this practice and had agreed or accepted it as a practice common in the industry and that it applied to the contract between the plaintiff and the defendant. Failing to do so, the defendant must be bound by its pleadings and could not raise this as a defence to the plaintiff's claim. The defendant had referred to an email between the defendant and Petronas Carigali on the rates for the catering. The defendant did not tender this email as exhibit and did not extend a copy of the email to the plaintiff. The plaintiff was not a party to that contract between the defendant and Petronas Carigali (see paras 9 & 16).

(4) The persons classified under 'Remang' were presumably the catering crews of the plaintiff who were providing the catering services on board the vessel on each day. Pursuant to the letter of intent the plaintiff could not charge the defendant for meals consumed by the catering crews of the plaintiff. These meals and charges should be excluded and to be deducted from the debit notes charged to the defendant by the plaintiff. The plaintiff's claims shall be reduced to RM452,225.96 only (see para 14).

(5) The defendant did not produce any letter from the defendant to dispute the claims of the plaintiff or to establish that the plaintiff's claims against the defendant were wrong or not sustainable. On the evidence, the plaintiff had, on a balance of probabilities, proved its case against the defendant (see para 17).

[Bahasa Malaysia summary

Defendan diberi kontrak untuk membekalkan kapal marin kepada Petronas Carigali. Defendan seterusnya mengambil plaintif untuk memberikan perkhidmatan katering kepada anak-anak kapal atas kapal untuk bulan-bulan Mei dan Jun 2011. Mengikut plaintif, perkhidmatan katering yang diberikannya berjumlah kepada RM495,735.96 yang mana defendan gagal untuk membayar. Maka, plaintif memfailkan tuntutan ini untuk jumlah

tersebut terhadap defendan. Defendan menafikan apa-apa mobilisi dan pembekalan makanan atau perkhidmatan katering oleh plaintif kepada defendan. Defendan berhujah bahawa ia telah memberitahu plaintif prosedur operasi standard ('SOP') yang diguna pakai kepada kontrak antara mereka; plaintif dikehendaki untuk mendapatkan akuan dan tandatangan Petronas Carigali bahawa perkhidmatan katering diberikan sebelum Petronas Carigali membayar defendan yang mana akan membolehkan defendan untuk membayar plaintif. Defendan berhujah bahawa plaintif gagal berbuat sedemikian dan tidak berhak kepada bayaran. Plaintif berhujah bahawa defendan tidak memberitahu mereka mengenai apa-apa SOP ataupun terma dan syarat mengenai SOP sedemikian. Keterangan menunjukkan bahawa dengan surat niat, defendan meminta plaintif untuk menyediakan makanan dan minuman pekerja-pekerja kapal atas baj kerja luar pesisir Terengganu. Defendan meminta plaintif untuk mengakui, tandatangan dan memulangkan surat secepat mungkin. Plaintif menandatangani dan memulangkan semula surat tersebut. Ini adalah satu-satunya dokumen atau kontrak dan tiada kontrak atau dokumen lain yang menetapkan terma dan syarat kontrak antara plaintif dan defendan.

Diputuskan, membenarkan tuntutan dengan kos:

(1) Berdasarkan 'residents meal record' untuk bulan Mei 2011, plaintif memulakan perkhidmatan katering atas kapal baj kerja dari 16 Mei 2011. Ia menyenaraikan nama pekerja-pekerja atau residen yang berada atas baj pada setiap hari kontrak untuk perkhidmatan katering. Rekod menunjukkan bahawa bilangan termasuk pekerja-pekerja dan pelawat daripada syarikat berasingan atau subkontraktor dan orang-orang lain yang bekerja atas kapal dan plaintif memberikan makanan dan minuman untuk orang-orang atas kapal. Ini termasuk krew katering daripada plaintif dan pekerja-pekerja daripada defendan (lihat perenggan 10).

(2) Dalam ketiadaan SOP yang ditetapkan atau amalan biasa dalam industri minyak dan gas atau bahawa plaintif dikehendaki untuk mendapatkan akuan dan tandatangan Petronas Carigali sebelum ia berhak kepada bayaran, pengakuan atau pengesahan oleh kapten kapal adalah bukti terbaik bilangan orang di atas kapal setiap hari dan bilangan orang untuk disediakan dengan makanan dan minuman di atas kapal setiap hari (lihat perenggan 12).

(3) Defendan tidak memplidkan bahawa ia adalah amalan atau adat biasa dalam industri minyak dan gas. Defendan tidak memplid bahawa plaintif mengetahui amalan ini dan telah bersetuju atau menerimanya sebagai amalan biasa dalam industri dan bahawa ia beraplikasi kepada kontrak antara plaintif dan defendan. Gagal berbuat sedemikian, defendan mesti terikat dengan plidingnya dan tidak dapat membangkitkan ini sebagai pembelaan kepada tuntutan plaintif.

Defendan telah merujuk kepada e-mel antara defendan dan Petronas Carigali atas kadar untuk katering. Defendan tidak menender e-mel ini sebagai ekshibit dan tidak melanjutkan salinan e-mel kepada plaintif. Plaintif bukan pihak kepada kontark antara defendan dan Petronas Carigali (lihat perenggan 9 & 16).

(4) Orang-orang yang diklasifikasikan di bawah 'Remang' adalah mungkin krew katering plaintif yang menyediakan perkhidmatan katering atas kapal setiap hari. Berikutan surat niat plaintif tidak dapat mencaj defendan untuk makanan yang dimakan oleh krew katering plaintif. Makanan dan caj-caj ini patut dikecualikan dan ditolak daripada nota debit yang dicaj kepada defendan oleh plaintif. Tuntuan plaintif akan dikurangkan hanya kepada RM452,225.96 (lihat perenggan 14).

(5) Defendan tidak mengemukakan apa-apa surat daripada defendan untuk mempertikaikan tuntutan plaintif atau untuk membuktikan bahawa tuntutan plaintif terhadap defendan adalah salah atau tidak boleh dikekalkan. Atas keterangan, plaintif telah, atas imbangan kebarangkalian, membuktikan kesnya terhadap defendan (lihat perenggan 17).]

Notes

For cases on claim for monies owing, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3760–3766.

Cases referred to

Muniandy & Anor v Muhammad Abdul Kader & Ors [1989] 2 MLJ 416, SC (refd)

Yew Wan Leong v Lai Kok Chye [1990] 2 MLJ 152, SC (refd)

Wendell Crocker (Lucas Crocker & Co) for the plaintiff.

Idris bin Zeidall (Firdaus & Co) for the defendants.

Stephen Chung J:

[1] The defendant was contracted to supply a marine vessel to Petronas Carigali for a project, offshore Kemaman, Terengganu. In May 2011, the defendant engaged the plaintiff to provide catering services to the workers, marine crews and catering crews on board the vessel for the months of May–June 2011. The plaintiff pleaded that it had provided the catering services which amounted to RM495,735.96. The plaintiff claimed that the defendant failed to pay this sum and filed this suit against the defendant to recover the said sum plus interest and costs.

[2] The defendant denied any mobilisation and supply of food or catering services delivered by the plaintiff to the defendant. The defendant contended

that it had informed the plaintiff of the standard operating procedures ('SOP') applicable to the contract between them. The defendant contended that the plaintiff was required to obtain the acknowledgement and signatures of Petronas Carigali that the catering services had been provided before Petronas Carigali would pay the defendant which would enable the defendant to pay the plaintiff. The defendant contended that the plaintiff failed to do so and was not entitled to the payment.

[3] The plaintiff via PW1 and PW2 contended that the defendant did not inform them of any SOP nor of the terms and conditions of such SOP. They testified that they did not know and were not informed of the terms of the contract between Petronas Carigali and the defendant. They said they were not instructed by the defendant to obtain any signature from Petronas Carigali or from any such officer or representative to confirm the number of persons on board the vessel offshore Terengganu as a condition for payment for the catering services provided.

[4] The evidence showed that by a letter of intent dated 10 May 2011 the defendant requested the plaintiff to cater the foods and drinks of workers on board of a work barge offshore Terengganu. It was stated in the letter that the estimated mobilisation would be on 13 May 2011 at Kemaman and the project duration was for 25 days plus five days extension. The schedule of price or rate was at RM95 per person per day inclusive of bottle drinking water and catering for marine and catering crews. The letter requested the plaintiff to acknowledge, sign and return the letter as soon as possible. The plaintiff signed and returned the letter on 11 May 2011. This was the only document or contract and there was no other contract or document which set out the terms and conditions of the contract between the plaintiff and the defendant. The plaintiff's claims against the defendant must be within the four corners of the letter of intent and the parties were bound by this contract.

[5] DW1 testified that due to the urgency of the contract to be carried out between the defendant and Petronas Carigali, the defendant was unable to find a caterer to provide the catering services at short notice at Kemaman. DW1 said the plaintiff which was based in Miri was introduced to the defendant as the caterer and it was the only caterer available at that time due to the short notice. He said he did not have time and option to look for other caterer.

[6] Although the defendant pleaded that it had informed the plaintiff of the SOP applicable to the contract between the plaintiff and the defendant, the defendant did not set out the date, time or place and who from the defendant had informed the plaintiff of the SOP. The defendant did not set out the terms and conditions of the SOP applicable to the contract between the plaintiff and the defendant in the pleadings. During the trial the defendant did not refer to

A the SOP nor produced a copy of the SOP. The defendant did not refer to the SOP or any SOP in the letter of intent and the defendant also did not set out the terms and conditions of such SOP in the letter of intent.

B **[7]** DW1 was the only witness of the defendant. The defendant did not file or serve any witness statement of DW1. DW1 did not testify on the SOP or on the terms and conditions of the SOP or that the defendant or by whom on behalf of the defendant had informed the plaintiff of the SOP. On the evidence, therefore the defendant had failed to substantiate its contention that under the C SOP the plaintiff was required to obtain the acknowledgement and signature of Petronas Carigali before it was entitled to payment for the catering services provided under the letter of intent.

[8] However DW1 said that it was the practice in the oil and gas ('O & G') D industry that the plaintiff was required to obtain the signature of the CSR whom he referred to as the client site representative ie Petronas Carigali in this case, to confirm or approve the payment under the contract. He said Petronas was very strict on such compliance.

E **[9]** It should be noted that the defendant did not plead this practice or that it was applicable to the contract or required between the plaintiff and the defendant. The defendant did not plead that it was a practice or customs common in the O & G industry. The defendant did not plead that the plaintiff knew of this practice and had agreed or accepted it as a practice common in the F industry and that it applied to the contract between the plaintiff and the defendant. Failing to do so, the defendant must be bound by its pleadings and could not raise this as a defence to the plaintiff's claim. Therefore there was no basis for the defendant to submit and rely on this as a practice common to the O & G industry which was applicable to the contract between the plaintiff and G the defendant as a defence to the plaintiff's claims against the defendant: see *Muniandy & Anor v Muhammad Abdul Kader & Ors* [1989] 2 MLJ 416; *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152.

[10] Based on exh P2, which was the 'residents meal record' for the month of H May 2011, the plaintiff commenced the catering services on board the work barge known as AWB Kingfisher from 16 May 2011. It listed the number of workers or residents who were on board the barge on each day of the contract for the catering services. The record showed that the numbers included workers and visitors from different companies or subcontractors such as Efficient Tech, I Data Intelek and others working on board and the plaintiff provided meals and drinks for these persons on board. These included the catering crews from the plaintiff and the workers from the defendant. The figures showed that there were many persons on board the vessel on each day, eg 144 on 17 May 2011 and 225 on 23 May 2011. The contract expired on 8 June 2011. The plaintiff

had also produced the meal record for the month of June which was marked as exh P4.

[11] Exhibits P2 and P4 showed that the meal records were acknowledged and signed by the captain of the barge Kingfisher. PW2 testified that the captain was responsible for the vessel and the safety of the personnel on board the vessel and he was the person who could confirm and approve the number of persons on board the vessel on each day. The plaintiff submitted that the captain was the best person to confirm the figures shown in P2 and P4. DW1 had testified that in this case the defendant's representative would be the barge master ie the captain of the vessel, which was operating offshore. Obviously the captain knew and was able to confirm the number of persons on board the vessel on each day. There was no evidence to the contrary that these figures were not accurate or wrong bearing in mind that this vessel was supplied by the defendant to Petronas Carigali and the captain was the CSR of the defendant.

[12] In the absence of an established SOP or a common practice in the O&G industry or that the plaintiff was required to obtain the acknowledgement and signature of Petronas Carigali before it was entitled to payment, the acknowledgement or confirmation by the captain of the vessel in P2 and P4 was the best proof of the number of persons on board the vessel on each day and the number of persons to be provided with foods and drinks on board the vessel on each day. P2 showed that the plaintiff provided a total of 3005 meals for May and 696 meals for June, at the agreed rate of RM95 per person. The plaintiff had issued a debit note for May for 3005 meals amounting to RM285,475 (see exh P5) and a debit note for June for 696 meals amounting to RM66,120 (see exh P3).

[13] Based on exhs P2 and P4, many workers from different companies or contractors were working on board the vessel at the material times. Both the plaintiff and the defendant did not testify or explain whether these workers were marine crews on board the vessel on each day. In the absence of such evidence or explanation there was no basis to exclude any of these persons or workers to be classified as marine crews.

[14] P2 and P4 included a category under 'Remang' ie the plaintiff in this case. The persons classified under 'Remang' were presumably the catering crews of the plaintiff who were providing the catering services on board the vessel on each day. Pursuant to the letter of intent the plaintiff could not charge the defendant for meals consumed by the catering crews of the plaintiff. P2 showed that 298 meals were consumed by the catering crew amounting to RM28,310 in May 2011. Similarly P4 showed that 160 meals were consumed by the catering crews amounting to RM15,200 in June 2011. These meals and charges should be excluded and to be deducted from the debit notes charged to

A the defendant by the plaintiff. The plaintiff's claims shall be reduced to RM452,225.96 only.

[15] The evidence showed that the plaintiff upon request of the defendant had sent a confirmation of its claims against the defendant to Ernst & Young, B the auditor of the defendant, including for a claim for RM144,140.95 being catering stocks handed over to the defendant at the end of the contract between the plaintiff and the defendant (see exh P6 at pp 7–11 of BOD 1).

[16] Although the plaintiff had referred to the catering inventory which was C signed by the captain of the Kingfisher and a representative of the defendant (see pp 12–34 of BOD 1), the plaintiff did not tender this document as an exhibit. Similarly the defendant had referred to an email between the defendant and Petronas Carigali on the rates for the catering. The defendant did not tender this email as exhibit and did not extend a copy of the email to the D plaintiff. The plaintiff was not a party to that contract between the defendant and Petronas Carigali.

[17] Based on the evidence adduced, the defendant did not produce any E letter from the defendant or from Ernst & Young to dispute the claims of the plaintiff or to establish that the plaintiff's claims against the defendant were wrong or not sustainable. On the evidence, the plaintiff had on a balance of probabilities proved its case against the defendant.

F **[18]** Therefore judgment is entered for the plaintiff against the defendant in the sum of RM452,225.96 with interest at 4%pa from the date of the judgment until full payment and costs of RM15,000 to be paid by the defendant to the plaintiff.

G *Claim allowed with costs.*

Reported by Afiq Mohamad Noor

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